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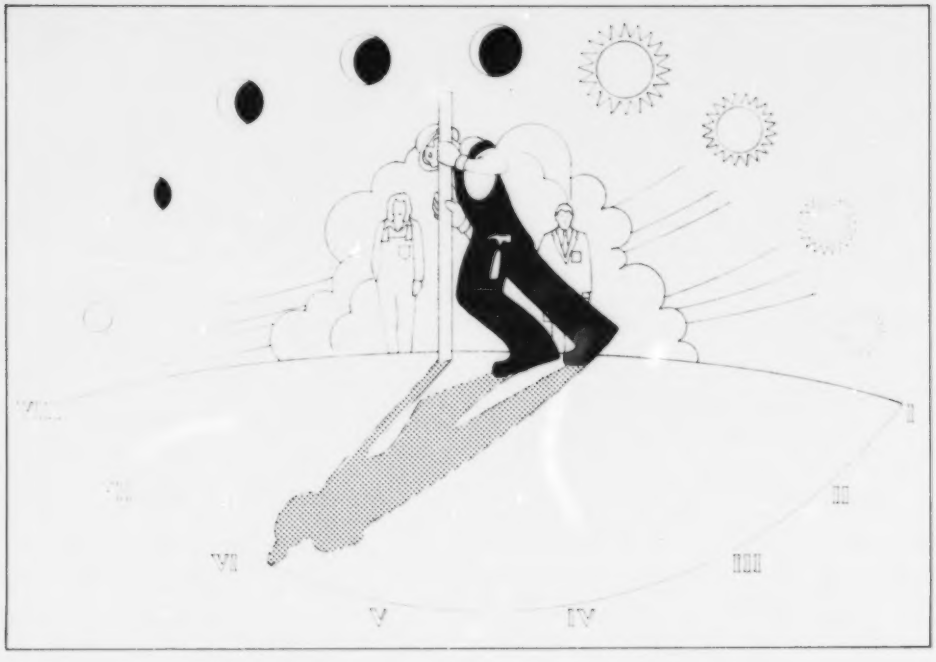

Trucking Industry and the Worktime Provisions of Ontario's Employment Standards Act

TRUCKING INDUSTRY AND THE WORKTIME PROVISIONS OF ONTARIO'S EMPLOYMENT STANDARDS ACT

by

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(A Report Prepared for the Ontario Task Force on Hours of Work and Overtime)

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The views expressed in this report are those of the author and need not reflect the position of the Ontario Task Force on Hours of Work and Overtime.

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HOURS OF WORK AND OVERTIME PAY PROVISIONS IN THE TRUCK TRANSPORTATION INDUSTRY

INTRODUCTION

There appear to have been at least 3 objectives for the hours of work and overtime provisions in the Employment Standards Act (hereafter referred to as the ESA): protecting the health and safety of workers; reducing unemployment levels by means of worksharing; and providing minimum working conditions for workers with limited bargaining power. But in designing the hours of work and overtime legislation in Ontario, it has become apparent that certain industries pose special problems that merit separate examination. This is not to suggest that they merit special provisions in the legislation; rather, they require a more in-depth analysis to see if special provisions or exemptions are desirable. The trucking industry is one of those.

For example, is labour legislation the appropriate vehicle for maintaining adequate safety standards for truck drivers and at the same time, providing acceptable levels of protection for other users of public roads? Excessive hours of service may impair a driver's judgment and ability to react and thus lead to a serious threat to safety. Enforcement of maximum hours regulations is critical for achieving the safety objective. However, while maximum hours legislation exists, it is not effectively enforced under either the Ontario ESA or the Canada Labour Code. Occasional random audits are conducted at a motor carrier's place of business to determine compliance with the federal regulations. Random audits are not undertaken by the Ontario Ministry of Labour. Under both pieces of legislation, the maximum hours regulations are enforced primarily in

response to complaints by employees. The Ministry of Transportation and Communications (MTC) has commented that very few complaints involve excessive hours; most involve the payment of overtime premiums or the distribution of overtime among employees (Gough and Thomas, 1987, p.13).

The issues of safety and the adequacy of regulating maximum hours of service through labour legislation, while they have always been important, they have taken on added importance because of increased involvement by the MTC. The Ontario Commission on Truck Safety, the Public Commercial Vehicles Act Review Committee and regulatory reform of trucking all emphasized safety and driving hours. Moreover, the MTC is committed, as part of a national effort through the Council of Ministers Responsible for Transportation and Highway Safety, to develop an hours of service regulation for the trucking industry to be incorporated into a National Safety Code.

Another question that has arisen is whether the job creation or worksharing objective of the overtime rules is feasible for the trucking industry. Truck transportation is a service industry subject to cyclical, seasonal and random disturbances. The inability to create inventories to act as a buffer against these disturbances may justify different treatment of this industry from that of the manufacturing sector. Furthermore, in this industry, employees can be converted into "independent" owner-operators who are not covered by the ESA and may not be covered by the Canada Labour Code either. Thus, if overtime rules create cost pressures on trucking companies, the option of restructuring into companies leasing trucks and equipment and/or contracting for the services of owner-operators is available as a means for circumventing the overtime and hours

regulations in the ESA or Canada Labour Code.

Another area of concern for the trucking industry is the absence of a single set of hours and overtime rules for the industry. There are many rules and jurisdictions regulating the truck transportation industry. The different sets of rules have complicated matters by creating many gray areas making it unclear which companies fall under which legislation and/or rules. Uncertainty about coverage exists not only for the many participants in the truck transportation industry but also for government officials responsible for enforcing the provincial and federal labour laws. In addition, the plethora of rules have led to apparent inequities and inconsistencies: inequities between private and for-hire carriers; inequities and inconsistencies from one jurisdiction to another; and inconsistencies between maximum-hour limits and overtime hours. The inequities, inconsistencies and ambiguities have provided some trucking companies with an incentive to structure working arrangements so as to circumvent the rules. As noted above, owner-operators presently may not be covered by any hours or overtime rules in Canada. Drivers provided through driver pools may work in excess of 60 or 70 hours per week and not violate any of the labour laws or receive any overtime pay.

In this paper we will focus on the safety issue and on the inequities and inconsistencies arising from the multiplicity of rules and jurisdictions in order to set out recommendations on hours of work and overtime for the trucking industry. We will concentrate on these areas and develop our recommendations within the context of the probable deregulation of this industry in Ontario during the next few years. Tightening regulations in one area (labour legislation, for

example), while loosening regulations in another area (Public Commercial Vehicles Act), may send confusing signals to the marketplace about the government's longer term intentions. This may interfere adversely with the continuing adjustments in the industry and may encourage the participants in the industry to search for more ways to get around as many regulations as possible, and so defeat the purpose of the rules. Consequently, one cannot consider the hours and overtime rules independently of the major structural changes which may occur in the industry.

Section II provides a current overview of the industry in Ontario and describe some of the more recent and important structural changes which have occurred and will continue to take place. The hours and overtime rules for the truck transportation industry will be discussed in section III. The focus will be on the rules in Ontario and at the national level in both Canada and the United States. Section IV summarizes the views and attitudes of the many participants in the industry on the present hours and overtime rules in the ESA and possible changes to these rules. The safety issue will be the focus of section V. The U.S. experience since the deregulation of the interstate, for-hire segment of the trucking industry will be examined, as will current developments in Canada to improve safety standards. Finally, in section VI, recommendations for revisions to the overtime and hours rules for the truck transportation industry will be set out.

INDUSTRY DESCRIPTION

Market Segments

The trucking industry consists of a number of distinct segments.

There are several ways of categorizing the structure of the industry. For the purposes of this study, the most convenient and useful is the following:

For-hire/common carriers

- intra-urban, local cartage
- intraprovincial
- interprovincial
- international

Private fleets

- provincially incorporated
- federally incorporated

Independents/brokers

- domestic
- international

Carrier services

For-hire or common carriers transport other people's goods for monetary compensation. All such carriers which travel on the public highways in Ontario, regardless of whether their operations are intraprovincial, interprovincial or international, must apply for and be granted a Public Commercial Vehicles (PCV) license.[1] At the present time, applicants for a license must demonstrate "public necessity and convenience" for the proposed services which are to be covered by the license. This condition essentially places the onus on applicants to demonstrate that the services are not available and are needed, and thus acts as an impediment to entry into this segment of the industry. The PCV license is not required for the transportation, for compensation, of goods within commercial cartage

zones or urban zones;[2] fresh fruits or vegetables grown in the continental U.S.; ready mixed concrete; domestic and municipal garbage; farm or forest produce, other than livestock or milk, that are the produce of the farm or forest from which they are being transported; and goods in accordance with a certificate of intercorporate exemption.[3]

As a result of the intercorporate exemption in the PCV Act, companies whose primary business is something other than truck transportation (e.g. construction, manufacturing, wholesale or retail trade), can operate private fleets to transport goods owned by them, their subsidiaries or affiliated companies. These private carriers either own a truck or fleet of trucks, or lease vehicles and drivers from carrier services, or contract with independents/brokers. The independents, more commonly known as owner-operators, own or lease their trucks and operate the vehicles themselves. They may lease their services to large for-hire carriers and operate under the licenses of these larger companies, or they may have their own PCV licenses. Carrier services refer to firms which lease trucks and drivers. These services do not require a PCV license if they enter into what are considered to be valid leases under the PCV Act.[4]

Size of Industry

There is no single source of data for the trucking industry in Ontario. There are several estimates of the size of the industry; however, these estimates are derived from different sources and concepts of the scope of the industry. Consequently, the data are not comparable and are incomplete. Nevertheless, they do provide some guides for the relative sizes of the various segments in the

industry and relative changes in the overall industry.

According to a fact sheet prepared by the MTC on the trucking industry in Ontario, there were approximately 10,000 licensed for-hire trucking companies in Ontario in 1985. About half of these companies had a class R license[5]; that is, they were dump truck operators, many of which have one or two trucks only. As well, there were about 85,000 heavy trucks (over 10,000 kg raw gross weight) registered in the province in 1985. Forty-nine percent were registered to for-hire companies and the remaining 51 percent were registered to private carriers. Major U.S. companies are operating in Ontario, among them UPS, Roadway, Yellowfreight and Consolidated Freightways. Any one of these companies is larger than the entire Canadian trucking industry. MTC also estimated that there are approximately 63,000 trucking industry employees in Ontario, about one-third of whom are unionized (see Table 1 for a breakdown of collective agreement data by union and federal or provincial registration). These employment estimates are not based on a comprehensive sample of the trucking industry. Large segments of the private carrier and independent segments are not included in the employment estimates.

Based on a more thorough review of MTC commercial vehicle licensing data, Thorne Stevenson and Kellogg (1983, p.22) concluded:

> Of the 778,351 commercial vehicles registered in Ontario in 1980:
> - 505,446 (under 5100 lbs. in weight) are estimated to include vans, tradesmen's vehicles, local delivery vehicles, etc.
> - 272,905 (over 5100 lbs. in weight) are larger vehicles operated by PCV carriers, private carriers, specialized vehicles operated by public bodies, etc. Of this grand total:
> - 76,000 are estimated to be operated in private fleets.
> - 53,702 were licensed to PCV carriers.
> - 143,000 were estimated to be operated by municipalities utilities, etc.

Trucking spokespeople estimate that for every truck there are one and a quarter to one and a half employed drivers. Using this ratio and the estimate of 130,000 vehicles in "transport of goods" service, between 162,500 and 195,000 people would be employed in trucking as drivers. Between 67,127 and 80,553 would be employed by PCV commerical carriers, and between 95,000 and 114,000 by private fleet carriers and driver-leasing companies.

Based on a 1984 survey of the trucking industry in Canada, Statistics Canada reported that there were 1,304 for-hire establishments in Ontario with gross operating revenues of at least $100,000, and another 7,400 carriers with gross revenues of between $10,000 and $100,000. In addition, there were 863 private trucking companies (with fleets of 15 or more vehicles)[6] and 1,397 full-time and part-time broker/operators. Table 2 contains a more detailed breakdown of the industry both for Ontario and Canada. The large for-hire carriers employed 41,066 people, of which only 22,972 were drivers, including supervisors and helpers (see Table 3). The private carries employed 29,485 people (see Table 4).

The survey also pointed out that in the large, for-hire trucking segment, wages as a proportion of operating expenses has declined steadily from just over 39 percent in 1979 to 36 percent in 1984 (Statistics Canada, 1986, p.57). The survey also found that for-hire carriers transported 91 percent of the goods originating from Ontario-based shippers to other destinations within Ontario. Only 9 percent of the tonnes were transported interprovincially (ibid, p.23).

According to a special Statistics Canada tabulation[7] there were 3,557 companies in the for-hire segment of the truck transportation industry with their Canadian headquarters in Ontario in 1983. About 75 percent of these companies had fewer than 5 employees. Another 16 percent employed between 5 and 19 people. There were 82 companies (2

percent of the total) with more than 100 employees, and only 38 foreign-controlled companies, 19 of which had more than 100 employees (see Table 5). Between 1978 and 1983 there was a very high turnover of companies in this industry. Over 2,100 firms disappeared from the industry in Ontario, while 1,500 companies entered during this period. Most of the turnover occurred among the smallest-sized companies.

Industry Trends

Canada:

According to an MTC fact sheet on the trucking industry in Ontario:

- the number of collective agreements registered in Ontario for the trucking industry has declined from 235 in 1981 to 223 in 1986;
- Teamsters membership in the industry in Ontario has fallen by about 17 percent during this same period, from 12,719 in 1981 to 10,605 in 1986;
- in trucking there is a trend to non-union establishments and owner-operators.

The Statistics Canada data derived from surveys of the trucking industry show that between 1982 and 1984, the number of employees in Ontario increased by 12 percent and 15 percent in the for-hire and private carrier segments respectively. The number of owner-operators used by private carriers increased by 56 percent over this same period. Thus, owner-operators as a proportion of all drivers in the private carrier segment rose from 4.1 percent in 1982 to 5.6 percent in 1984.

United States:

The most important development in the U.S. has been the continued deregulation of the industry since 1980. This has had a profound effect on employment and company stability, the growth in the use of owner-operators, and the growth of non-union companies. Teamster membership in this industry has declined by about one-third since 1980. Reese Taylor, the former chairman of the Interstate Commerce Commission, noted in his testimony to a Senate committee hearing that (U.S. Senate, 18985, p.15):

> Since mid-1980, labor costs have become a far more important influence on the success or failure of trucking firms. Most of the more than 14,000 new motor carriers operating under the Act are non-union carriers. Price competition and discounting have made wages a critical factor in financial performance.

The truckload segment of the industry is characterized by minimal capital investment and ease of entry. The less-than-truckload segment is characterized by networks of consolidation centres and satellite terminals, all of which require heavy capital investments. Consequently, entry has been more pronounced in the truckload segment; while in the less-than-truckload segment, the large common carriers have increased their market shares.

In the most recent Standard and Poor's survey of the trucking industry, the following observations were made (Standard and Poor's, 1986):

- The private carriage segment's growth accelerated during the 1960's and 1970's when Teamster wage scales rose high enough to being pricing common carriers out of the truckload market and companies could cut their transportation costs by using increasingly cheaper non-Teamster drivers (p.26).

- The private carriers' share of the intercity motor freight market has declined from about 50 percent in 1980 to around 40 percent in 1985, as deregulation of the industry has pushed down the prices of for-hire carriers and increased the scope of operations for contract carriers. Contract carriers maintain a portion of their equipment and drivers for the needs of each customer. These companies are primarily non-union and have become a growing segment in the truckload market (pp.26,28).
- Private carriers may disappear as a distinct segment as companies either establish their private carriage operations as full-fledged, for-hire transportation subsidiaries or increasingly utilize the services of contract carriers, single-source lessors and/or owner-operators (p.27).
- Several of the large, common carriers hav formed holding companies and created wholly-owned, and often non-union contract subsidiareis to recapture part of the truckload market. As well, to reduce costs in the less-than-truckload segment, some companies have introduced discounts for shippers who transport their own goods directly to the trucking companies' terminals. And to compete in the just-in-time inventory market, several companies are offerring rebates to their customers if they cannot meet delivery schedules (pp.30-32).

HOURS AND OVERTIME RULES

Scope of Federal Powers in Canada

Under the Constitution the provinces have the right to enact labour

legislation. However, the federal government has the right to control and regulate inter-provincial, national or international industries such as transportation, communications, broadcasting, banking uranium mining, grain elevators, flour and feed operations; federal Crown corporations (e.g., CNR, Air Canada, CBC); and companies whose operations are for the "general advantage" of two or more provinces. These rights enable the federal government to intervene with and supersede the provinces' rights in the area of labour legislation in those industries under federal jurisdiction. "Although legislative power in respect of labour law in Canada rests primarily with the provinces, the federal government is competent to enact legislation setting minimum standars and conditions of employment for workers engaged in those occupations and industries within federal jurisidiction." (CCH, 1987, p.512).

But the dividing lines between areas of federal and provincila jurisdictions are not always clear even though the following test of inter-provincially and federal jurisdiction was formulated by A.H. Brown, the acting chairman of the Canada Labour Relations Board, in the **Desrosier Cartgage Case:** (ibid, p. 528).

> The decisions of the courts do not establish clearly the tests to be applied for the purpose of determining the question whether a particular undertaking connects a province with any other or others of the provinces or extends beyond the limits of the province.
> However, in the opinion of the Board, the mere fact that the ordinary business of the Company requires its trucks to travel outside the Province of Quebec does not in itself necessarily mean that the undertaking is one extending beyond the limits of the province. Rather the true test to be applied is whether the Company has so arranged its physical propoerties and its operations are carried on outside the province with a certain regularity or in accordance with a certain pattern.

The courts argued in a similar vein in the case of inter-provincial trucking: (ibid)

> (I)n the **Liquid Cargo Lines Ltd.** case, although less than two per cent of the transporter's business extended beyond the Province of Ontario, the operation as a whole consituted an undertaking within federal jurisdiction. The deciding factor being that the transporter stood ready at any time to provide its customers with extra-provincial service consistently and without interruption whenever they requested it.

Canada Labour Code

The Code establishes among other matters, the maximum hours and overtime regulations for the employees of companies defined as federal works, undertakings or businesses within the legislative authority of the federal government. These are defined in section 2 of the Code as:

> (a) a work, undertaking or business operated or carried on for on in connection with navigation and shipping.....;
> (b) a railway, canal, telegraph or other work or undertaking connecting any province with any other or others of the provinces, or extending beyond the limits of the province;
> (c) a line of steam or other ships connecting a province with any other or others of the province.....;
> (d) a ferry between any province and any other province.....;
> (e) aerodromes, aircraft or a line of air transportation;
> (f) a radio broadcasting station;
> (g) a bank;
> (h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more prvinces; and
> (i) a work, undertaking or business outside the exclusive legislative authority of provincial legislatures.

Section 29 specifies that the standard hours of work are 8 hours per day and 40 hours per week except as otherwise provided. Section 26 defines overtime as hours of work in excess of the standard hours of work and section 32 specifies that the rate of payment for overtime hours must be at least one and a-half times the regular

hourly wage rate. The standard hours after which overtime must be paid may be extended to a maximum of 48 hours per week (averaged over two consecutive weeks) by ministerial permit (section 29.1) or such hours as may be prescribed for a particular industrial establishment where a ministerial permit is obtained (section 33) or where emergencies arise (section 34).

Motor vehicle operators are subject to a special set of regulations which modify sections 29 and 30 of the Code. There are two sets of regulations: the Motor Vehicle Operators Hours of Work Regulations and the Canada Motor Vehicle Operators Hours of Service Regulations. The principal features of these regulations are the following:

- the standard hours of work for city motor vehicle operators may be 9 hours per day and 45 week;
- the standard hours of work for highway motor vehicle operators may be 60 hours per week;
- the standard hours for highway motor vehicle operators who do not normally drive on public roads may exceed 60 hours per week if authorized by a ministerial permit;
- the standard hours of work per day or week for motor vehicle operators employed in any day or week as both city motor vehicle operators and highway motor vehicle operators, or as city or highway operators and employees not covered by either of these two sets of regulations or the Canada Labour Code, may be the standard hours of work for the class of employment in which they work the greatest number of hours in that day or week;
- the maximum hours of service of motor vehicle operators (both

city and highway vehicle operators) cannot exceed 10 hours driving per work shift; 15 hours on duty per work shift; and 60 hours on duty during any 7 consecutive days except in the following cases;

(a) motor vehicle operators can remain on duty for up to 70 hours in any 8 consecutive day period when employed by motor carriers who operate every day in the week;

(b) motor vehicle operators can extend their driving hours from 10 to 12 per shift, but not more than twice during any period of 7 consecutive days and as long as they do not exceed the maximum number of hours on duty during that period;

(c) regional Directors of the Department of Labour can issue permits, for a period of up to one year, to extend the driving hours per work shift to 15, the hours on duty per work shift to 18, and the total number of hours on duty during any 7 consecutive day period to 70.

In summary, under the federal law, truck drivers must be paid an overtime premium for every on-duty hour after 9 per day or 45 per week if they are classified as city motor vehicle operators, and after 60 hour per week if they are highway motor vehicle operators. On-duty hours exclude the time during the work shift when drivers are relieved of their job responsibilities by the motor carrier and are free to leave the vehicle for authorized meals and rest while en route, and for periods of waiting of not more than 2 hours per work shift. Maximum hours for city or highway operators are 10 hours per day driving time and 15 hours per day and 60 hours per week total on-duty time, although there are numerous exceptions to these maximum hours requirements. The definitions of motor vehicle operators are

sufficiently broad so as to cover some owner-operators. For example, in the Hours of Work Regulations, a motor vehicle operator is defined as a person who operates a motor vehicle. In the Hours of Service Regulations, the definition includes persons who operator motor vehicles as a motor carrier; an employee of a motor carrier; a subcontractor of a motor carrier; or an employee of a subcontractor of a motor carrier. Finally, the regional Directors can issue permits for extended hours only if they believe that the extension of hours will not jeopardize the safety or health of the motor vehicle operator, other employees, or the general public.

Ontario: Employment Standards Act

According to section 2 (2), the Act "applies to every contract of employment ..... (a) where the employment is for work or services to be performed in Ontario; or (b) where the employment is for work or services to be performed both in and out of Ontario and the work or services out of Ontario are a continuation of the work or services in Ontario." This latter clause may bring the ESA into conflict with the test of inter-provinciality underlying the Canada Labour Code and may have added to the periodic confusion that arises over the jurisdictional limits of the ESA and the Canada Labour Code.

Section 20 permits the Director of Employment Standars to issue two kinds of permits allowing for hours of work beyond the standard 8 per day and 48 per week. Section 20 (1) authorizes the issuing of the 100-hour annual permits (blue permits) to individual employers upon request. These permits allow up to 12 excess hours per week for truck drivers and 7 other categories of employees, and 100 excess hours per year for all other employees. Section 20 (2) authorizes

the issuing of special permits (green permits) to individual employers when the Director is satisfied that the work requires these excess hours. These permits grant hours in excess of those issued under the blue permits. In addition, industry permits have been granted to 26 industries. These permits automatically apply to all employees in the specified industries and allow excess hours as specified.

While the trucking industry is covered under these industry permits, there is no single set of rules which establish a uniform maximum number of hours for all segments of that industry. Most of the for-hire companies that operate only within Ontario are covered by industry permits #11 (highway transport) and #15 (local cartage). Some dump truck operators may be covered instead by industry permits #2 (asphalt paving-mix plant), #8 (crushed stone, quarry, sand and gravel), #18 (ready-mix concrete plant), and #24 (concrete block manufacturing). Furthermore, it is possible that some for-hire companies may be covered under industry permit #10 (fruit and vegetable processing), or section 65.4(e)(iv), Regulation 285 (transporters of sod).

Private carriers in Ontario, not covered by the Canada Labour Code, may or may not be exempted from the statutory 8 and 48 limits. Private carriers are subject to higher limits if they are covered by any of the industry permits; if they requested and were issued the blue permits or green permits; or if they are in the construction industry (section 65.4(d), regulation 285).

As well, there is no single set of rules covering the payment of a wage premium for overtime hours. The following for-hire companies are subject to overtime provisions differing from the 44 hour rule

set out in Section 25(1) of the ESA:

- Local cartage (defined as the business of carrying goods for hire within a municipality or to any point not more than three miles beyond its limits)[8]: overtime after 50 hours per week (Section 17(1), Regulation 285);
- Highway transport (defined as a company licensed under the PCV Act): overtime after 60 hours per week (Section 17(2), Regulation 285). For both groups of for-hire carriers, hours of work are defined analogously to the hours of service definition in the Canada Motor Vehicle Operators Hours of Service Regulations.

Private carriers operated by companies in the following industries are subject to special overtime provisions as well:

- Road building (streets, highways, parking lots): 55 hours per week (Section 16(1)(a), Regulation 285)[9];
- Road building (bridges, tunnels or retaining walls): 50 hours per week (Section 16(1)(b), Regulation 285)[10];
- Fresh fruit and vegetable processing: 50 hours per week (Section 17(4), Regulation 285);
- Sewer and watermain construction: 50 hours per week (Section 17(5), Regulation 285); and
- Transporters of sod: no overtime (Section 6(d)(iv), Regulation 285).

According to the definitions of employee and employer in Section 2 of the ESA, it does not appear that owner-operators are covered by the Act. The overtime rules applicable to drivers provided by driver leasing firms (driver pools) depend upon whether the drivers are employed by the leasing firm, and if so, whether nor not they operate

intra-provincially, or whether they are employed by the shippers, and if so, whether the shippers are covered by the federal or provincial act.

Rationale for Exemptions in ESA

The Thorne Stevenson and Kellogg study noted that the special overtime provisions for highway transport in Ontario "were made because of the tradition, history and nature of highway transport[11] as well as the representations that were made by interested parties and the fact that the federal government had special hours of work provisions for highway transport in the Canada Labour Code." (Thorne Stevenson and Kellogg, 1983, p. 14)

The object of the excess hours permit system is to allow some flexibility with respect to maximum hours, thereby accounting for variations in the types of work, characteristics of industries, economic and labour market conditions, but still controlling hours. Essentially, the permit system recognizes that, to meet peak load requirements or special circumstances, employers may be justified in periodically exceeding the 48-hour weekly maximum. At the same time, it recognizes that unrestricted overtime is injurious to the health and safety of workers.

The Ministry of Labour has also suggested the following reasons for all the hours of work and overtime pay exemptions and exceptions in the ESA, not just those applicable to the truck transportation industry:

Hours of work:

- little need for protection as workers have strong bargaining positions;

Table 1

Collective Agreements for the Trucking Industry in Ontario

(August 20, 1986)

Union	Number of Agreements	Number of Employees
Provincially registered agreements:		
Canadian Brewery Workers	4	190
Christian Labour Association	2	17
CLC directly chartered	1	117
Boilermakers	2	20
Energy and Chemical Workers	1	14
Independent local unions	12	508
National Council of Canadian Labour	14	886
Railway Clerks	3	1363
Railway Transportation and General Workers	11	740
Retail Wholesale Employees	2	90
Rubber Workers	1	37
Teamsters	168	10,605
United Steelworkers	2	36
Federally registered agreements:	25	6060
Total	248	20,683

Source: Ontario Ministry of Transportation and Communications, Transportation Regulation Development Branch

Table 2
Number of Establishments and Employees in the
Trucking Industry
Ontario, 1984

Industry Segment	Number of Establishments	Number of Employees
For-hire trucking		
Large firms	1,304	41,066
Local/Off-highway	314	3,698
Intercity	990	37,368
Interprovincial	356	26,447
International	335	21,325
Small firms	7,366	n.a.
Private trucking	863	29,485
Broker operators	1,397	n.a.

Source: Statistics Canada (1986)

Table 3

Types of Employees and Average Annual Compensation,
For-Hire Trucking Establishments in Ontario, Large Firms, 1984

	Number	Average Compensation
		$
Drivers, including supervisors and helpers	22,972	28,000
Other	579	11,500
Equipment maintenance and garage employees	2,949	28,500
Terminal and platform	7,595	27,000
Sales, tariff, advertising, and other administrative	6,971	29,000
Total	41,066	28,000

Source: See Table 2

Table 5

Types of Employees and Average Compensation,
Private Trucking Establishments in Ontario, 1984

	Number	Average Compensation $
Drivers	22,436	24,500
Full-time	20,193	
Part-time	2,243	
Lease drivers	1,082	27,500
Full-time	846	
Part-time	236	
Mechanics	2,482	27,000
Full-time	2,360	
Part-time	122	
Other	3,483	20,000
Full-time	2,883	
Part-time	602	
Total	29,485	24,500
Full-time	26,282	
Part-time	3,203	

Source: See Table 2

- workers would consider coverage to be infringement of their status;
- coverage could be detrimental to the public interest and pose safety concerns;
- seasonal and other environmental factors dictate when work can be done and often when it must be completed.

Overtime Pay:

- workers have other means of protection (collective bargaining, legislation), and some groups would consider coverage to be an infringement of their status;
- cost factor of coverage could have adverse effect on services to the public;
- seasonal and environmental factors compress the time period when work can be carried out and dictate when work must be completed;
- special treatment recognizes the peculiarities in work environment or method of payment;
- higher pay levels compensate for prevailing practice in the occupations of not receiving overtime pay.

Ambiguities in Coverage of Federal and Provincial Laws

The many different rules of the federal and provincial levels governing hours and overtime for the truck transportation industry and the lack of a precise dividing line between the areas of federal and provincial jurisdictions have created serious problems for interpretation and enforcement of the laws. For example, it is not always clear which hours and overtime regulations apply to employees who alternate between city and highway driving,

unless they work for private carriers covered by the ESA. However, determining whether private carriers come under the federal or provincial laws is not a clear-cut matter. The absence of any distinction between private carriers and for-hire carriers in the Canada Labour Code and the laxer rules in this code provide an incentive for private carriers, whose drivers operate on intercity routes, to seek federal incorporation in order to increase the likelihood of their being covered by the Canada Labor Code. Owner-operators are not covered by the ESA but they may be covered by the Canada Labour Code. Drivers provided by driver leasing firms which have no PCV license may be covered by one of the private carrier rules in the ESA or may be covered by the federal law. But the overtime rules for highway transport in the ESA cannot apply to these drivers. Yet according to the Thorne Stevenson and Kellogg study, it would appear that pool drivers are paid an overtime premium for hours in excess of 60 per week.[12]

Two MTC officials have stated (Gough and Thomas, 1987, p.8):

> Without a doubt, the most commonly raised issue is the lack of uniformity between jurisdictions. Those seeking to determine legal requirements invariably pose the questions "what is the maximum number of hours a truck driver may drive, and what legislation are they covered under?

To emphasize the ambiguities in answering these questions, they listed several cases (reproduced in Table 6). They also emphasized (p.9) that "a lack of uniformity and convoluted legislation have seriously impeded any enforcement effort."

Canadian carriers operating into the U.S. however, must comply with very special hours of service regulations promulgated by the U.S. Department of Transportation. These regulations are aimed at enhancing highway safety and are not concerned with equitable labour

practices.

Hours and Overtime Legislation in the United States

There are no maximum working hours rules in the Fair Labor Standards Act. There is a provision for the payment of one and a-half times the regular rate of pay for hours worked in excess of 40 per week. Section 13 (b)(1)of the act provides an exemption from the overtime requirement to any employee with respect to whom the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act of 1935. This exemption applies to:

- motor carriers using the highways for the purpose of engaging in interstate or foreign commerce;
- interstate common and contract carriers of passengers and property;
- interstate private carriers of property;
- truck leasing firms with respect to the leasing of both drivers and vehicles; and
- employees whose activities directly affect the safety and operation of motor vehicles used in interstate or foreign commerce.[13]

The exemption was provided in order to avoid dual regulation (by separate government agencies) of workers in the trucking industry. Leonard (1983, p. 21) has pointed out:

> Although the normal rule under the FLSA is that exemptions must be construed very narrowly, the motor carrier exemption has been construed very broadly by the courts, because its scope is as wide as the authority of the U.S. Department of Transportation to restrict hours of the affected employees for safety reasons. The result has been to exempt from the overtime protections of the FLSA as great many employees in the transportation sector of the economy.

The Department of Transportation has established rules setting daily and weekly maximums for driving hours and hours of service; but there are no overtime rules. The Federal Motor Carrier Safety Regulations specify the following maximums:

- driving: 10 hours per day, 60 hours per 7 consecutive days or 70 hours per 8 consecutive days;
- on duty: 15 hours per day, 60 hours per 7 consecutive days or 70 hours per 8 consecutive days;
- exceptions to daily maximums: 2 hours for adverse weather conditions.

At the state level, employees of intrastate common, contract and private carriers are generally exempt from overtime regulations in the states in which there are such rules. A phone survey of eight states with overtime pay provisions revealed that only in California are a very small number of private carriers covered by the overtime rules. Intrastate, common carriers licensed by the California regulatory authority are exempt from the requirement to pay an overtime pay premium.

Canadian Provinces

Only Alberta and Saskatchewan, among the other provinces in Canada, have special overtime pay provisions for the segments of the trucking industry under their jurisdiction. In Alberta, motor vehicle operators and their helpers must be paid at the rate of one and a-half times their regular rate of pay for all hours in excess of 10 per day and 50 per week. This provision covers operators of trucks weighing 910 kilograms or more, registered as a public service or commercial vehicle and used on inter-city highways. There is no

distinction between private carriers and common carriers. The Director of Employment Standards can approve agreements between employers and employees for payments of wages and overtime pay, on the basis of work performed, mileage driven or any other reasonable basis.

In Saskatchewan the following are exempt from the hours of work and overtime pay regulations: truck drivers in the logging industry or employed in the area north of township 62; and wholesale driver salesmen selling and delivering dairy products, beverages or bakery products to retailers in the area outside city. For oil truck drivers, the weekly hours must be averaged over a 12 month period for the purposes of determining overtime pay premiums. All other truck drivers under provincial jurisdiction in Saskatchewan are covered by the general overtime pay rule of one and a-half times the regular rate for hours worked in excess of 8 per day or 40 per week. In all the other provinces, truck drivers are covered by the general overtime provisions.

ISSUES AND PROBLEMS

The Role of the Ministry of Transportation and Communications

MTC is presently involved in a federal-provincial effort to develop a National Safety Code for the trucking industry. This exercise is aiming at standardizing the hours of service regulations across Canada in order to improve truck safety. In addition, the task force developing the regulations is trying to harmonize hours of service rules across Canada and between Canada and the U.S.; the former being important because of the numerous inconsistencies from one jurisdiction to another, and the latter being important because of

the increasing transborder truck traffic and the prospect for even greater increases in the aftermath of some form of free trade arrangement. MTC officials have noted that (Gough and Thomas, 1987, p.2):

> The initiative to limit the number of hours a driver can operate has widespread support. The trucking industry, union, motorist groups, etc. all share a concern for safety, and each agree that some form of control of driver hours should be established and enforced. Such control is not new. The United States has had federal hours of service regulations in place since 1937.....Canadian operators running the U.S. must abide by the federal regulations. Other countries, including members of the European Economic Community and Australia also control hours of service.

While hours of service for truck drivers are currently controlled by provincial and federal laws, MTC has suggested that these laws are inappropriate vehicles for regulating hours from a safety perspective. Their enforcement procedures are inadequate for ensuring compliance. Enforcement tends to be by complaint only. There is no on-highway enforcement of driver hours. Consequently, rules controlling the hours of service must be transferred to new legislation which is primarily concerned with safety and so will incorporate an effective enforcement procedure. Without an effective enforcement mechanism, such rules will be spurious.

But MTC has recognized and emphasized that the exercise they are involved in may possibly conflict with existing labour legislation and proposed changes to the ESA. For example, the maximum hours of service may differ between the National Safety Code and either the ESA or the Canada Labour Code. Thus, a motor vehicle operator may be in compliance with one set of rules and in violation of the other set. This type of problem can be avoided if the hours of service rules are made consistent among the various pieces of legislation, or if the more stringent legislation is allowed to take precedence.

Non-Government Views

MTC officials have pointed out that the 1981 Ontario Commission on Truck Safety received a number of submissions from the trucking industry and the general public commenting on hours of work and safety. The concerns raised in the submissions included the following (Gough and Thomas 1987, p. 6).

- the maximum number of daily working hours in the Canada Labour Code is too high;
- non-unionized employees are less willing to lodge complaints;
- owner-operators are more likely to exceed maximum hours;
- enforcement by audit of company records is inferior to enforcement by roadside checks.

The Thorne Stevenson and Kellogg researchers interviewed a number of people representing various groups in the trucking industry. Following is a summary from their findings (Thorne Stevenson and Kellogg, 1983, p.47-49):

> The PCV or commercial carriers, as represented by the Ontario Trucking Association, expressed interest in uniform adoption of the Canada Labour Code standards for hours of service for highway transport drivers.....No expressed position on current legislation for overtime pay or hours was made.
>
> The private Motor Truck Council.....made a formal representation to the Ministry of Labour to have drivers working for their member organizations covered under the 60 hour per week overtime pay provision that now applies only to drivers of commercial carriers.
>
> Reasons for change given are; to eliminate what they describe is a "perceived discrimination"; to achieve some uniformity with other legislation in the country; and to eliminate what they describe is an "inequity" in terms of operating costs vis a vis drivers of public commercial vehicles.....
>
> Local cartage operators as represented by the Industrial Cartage Association of Metropolitan Toronto, also evinced no interest in changing the legislation.....

Representatives of the Teamsters Union, The Canadian Brotherhood of Railway Transport and General Workers and the National Council of Canadian labour expressed little concern with the overtime pay legislation. These unions feel working conditions in their labour agreements with employers are more advantageous than the minima of the Employment Standards Act. As a result, they do not foresee any difficulties with suggestions of changing the legislation to include drivers of private vehicle operators under the provision to pay overtime pay after 60 hours of work per week.

The positions outlined in the briefs submitted to the Task Force by groups representing different trucking interests do not appear to have changed from those summarized above by Thorne Stevenson and Kellogg. For example, the Ontario Trucking Association recommended the following: that the enforcement of the current rules be enhanced by means of strict on-road and office inspections; the current rules (those for local cartage and highway operators) be applied uniformly to all truck drivers whether they be employees of for-hire or private carriers or owner-operators; the flexibility of the legislation be maintained because of the nature of the trucking industry;[14] and the current rules (for local cartage and highway operators) remain unchanged. The OTA commented in its submission that the rules governing hour of work and overtime in the trucking industry should reflect the following objectives: safety, economic feasibility, employment growth, and practicality. With regards to the employment growth objective, the OTA argued that lowering the maximum allowable hours of work is not likely to create new full-time job opportunities.

The Private Motor Truck Council of Canada, in its submission, also stressed the importance of safety, flexibility and enforcement and the need for fairness since most private carriers must pay overtime after 44 hours in a week, while most for-hire carriers do not have to pay any overtime. The Council suggested that there be a

Table 5

Number of Firms, Size and Country of Ownership,
Ontario, 1978 and 1983

	1978	1983
Less than 20 employees		
Canadian	3602	3240
Foreign	11	7
20-100 employees		
Canadian	367	216
Foreign	24	12
100 or more employees		
Canadian	109	62
Foreign	25	19

Source: Special Statistics Canada tabulation provided by the Ontario Ministry of Treasury and Economics.

Table 6

Coverage of Different Groups of Carriers/Drivers

Carrier/Driver	Canada Labour Code	ESA
Company driver for intra-provincial private carrier	no, but maybe business is federally regulated	yes/maybe
Owner operator contracted with intra-provincial transport	no, but maybe if dependent contractor	no
Company driver for for-hire carrier licensed only for intra-provincial transport	no	yes
Owner operator contracted with for-hire carrier licensed only for intra-provincial transport	no	no
Company drivers for for-hire carrier holding extra-provincial operating license	yes/no/maybe	no/maybe
Owner operators contracted with for-hire carrier holding extra-provincial operating license	yes/no/maybe	no

Source: B.H. Gough and P. A. Thomas (1987) "Hours of Service Regulations for the Trucking Industry A Review of the Issues", Ontario Ministry of Transportation and Communications, mimeo.

uniform standard work-week for the trucking industry of 60-hours, with overtime premiums paid for hours in excess of this standard.[15] Tightening the overtime rules would produce little, if any, net new jobs in the industry according to the Council. Finally, the Council recommended that a "clear and consistent enforcement policy be adopted using driver logs or mechanical device to monitor drivers' hours of service."

The Greater Ottawa Truckers Association appeared to pursue the fairness argument in its brief by pointing out the following apparent anomolies in Regulation 285:

- an employee of a PCV holder is allowed to work 60 hours per week before overtime applies;
- a non-PCV trucker on road construction is allowed to work 50 or 55 hours per week before overtime applies;
- on sewer and watermain projects, a non-PCV trucker is allowed to work 50 hours before being eligible for overtime pay premiums; and
- owner-operators are exempt from overtime rules even when working under long term contracts with a PCV truck company or a private carrier.[16]

MacKinnon Transport emphasized that any tightening of the hours and overtime rules in the ESA would adversely affect the competitive position of intraprovincial carriers vis a vis interprovincial truckers under the federal legislation or U.S. carriers operating in Ontario and exempt from Canadian labour laws (unless they have subsidiaries incorporated in Canada). This would force intraprovincial carriers to seek route authorities in Quebec, Manitoba or the U.S. in order to qualify as interprovincial or

international carriers for the purpose of the Canada Labour Code. Ultrahaul, in its letter to the Task Force, presented a similar argument. MacKinnon also suggested that there are many new types of driver services appearing which seem to escape both provincial and federal labour laws. Consequently, a tightening of the overtime rules, such as lowering the trigger point below 44 or 60 hours per week (depending on the segment of the trucking industry), might lead to more rapid growth of these driver services. Jimmy "D" Coverdale Transport hinted that owner-operators might be substituted for employees in order to get around any tightening of the overtime and hours rules in the ESA.

Arriscraft Corporation, Reitz Moving Ltd. and Erb Transport stressed the need for flexibility in the rules because of the seasonality in the demand for truck transportation services, the high training costs for developing qualified drivers and the long driving distances in northern Ontario. Essentially, they all favored continuation of the current 60 hours per week limits for overtime. Finally, the Ontario Motor Coach Association repeated many of the preceding arguments in its submission. But the Association also questioned the efficiency of changing the ESA at a time when many other regulatory and legislative changes were occurring or being planned, all of which would impinge directly or indirectly on the transportation industry.

Deregulation

One of the major changes that is being reviewed by the government of Ontario, in conjunction with the federal and other provincial governments, is the deregulation of the transportation sector. The impacts of deregulation initiatives both in Canada and the U.S., are

and will continue to be, quite dramatic on the transportation industry. Transport Canada, in its economic analysis of transportation services in Ontario, concluded that Ontario "competing with the industrial heartland of the U.S., needs a regulatory system that will allow its transport sector to adjust to the rapidly changing needs of its economy and meet the challenge of a rejuvenated J.S. deregulated transportation system" (Transport Canada, 1986). Whether or not the conclusion of this study is correct, Ontario cannot escape the political and economic effects of the deregulation of the U.S. transportation system.

U.S. deregulation has resulted in a diversion of the transport of transborder and other international freight traffic from Canadian to U.S. carriers. An MTC study found sharp discrepencies in rates between Toronto and U.S. points, and Buffalo and the same U.S. points (MTC 1985). Thus, Ontario-based users of truck transportation services have been using private truckers to transport their goods to terminals in Buffalo or Niagara Falls, New York, to be transferred to, and shipped by, U.S. trucking companies.

MTC has also noted that the most rapidly growing areas within the truck transportation sector in Ontario have been private carriers, leasing firms, couriers, transportation brokers and contract carriers. All of these services have grown in order to escape the restrictions of the regulations in the PCV Act, and some have grown as a means of circumventing the labour laws.

Deregulation of the trucking industry appears to be inevitable. On the basis of the U.S. experience, this will have serious repurcussions for job security and the use of unionized labour and owner-operators. Consequently, any changes in the hours and overtime

rules need to factor in the possibility of deregulation and the resulting competitive pressures to cut costs. Inevitably, there will be a debate over the relative merits of the gradualism versus "cold-turkey" approach towards changing the overall regulatory environment. Hence, the Task Force will have to consider the relative merits of adding changes in the ESA to the prospective changes in the PCV Act and other provincial and federal legislation.

Collective Bargaining Agreements

MTC has pointed out that since 1981 the number of collective agreements registered in Ontario for the trucking industry has declined from 235 to 223. Moreover, Teamsters membership in Ontario has declined by almost 17 percent between 1981 and 1986. The trend towards non-union establishments in the industry in part is the result of the relative growth of the private carrier segment of the industry, a segment which is less unionized than the common carrier segment; and in part, the result of a relative increase in the number of owner-operators.

A survey by the author of 60 collective agreements involving Ontario trucking companies revealed that the present overtime rules are minimum standards which are generally surpassed in unionized companies. Six of the agreements cover owner-operators only and do not include any overtime provisions. Of the remaining 54 agreements, the distribution of the standard work week for employees paid an hourly wage rate only is as follows:

- 40 hours: 57 per cent
- 42.5 hours: 4 per cent
- 44 hours: 4 per cent

- 45 hours: 11 per cent
- 50 hours: 9 per cent
- 55 hours: 4 per cent
- 60 hours: 11 per cent

Many of the agreements (43) also specify a daily limit for standard hours, beyond which employees are entitled to an overtime pay premium. A small number of agreements include clauses that exempt employers from having to pay an overtime premium for excess hours which are caused by emergencies beyond the employers' control. For employees paid a combination hourly and mileage rate, primarily highway transport drivers, the standard work week is generally set at 60 hours.

In addition, most of the agreements specify that when employees are called in to work overtime, they have to be paid for a minimum number of hours (usually between 2 and 4), regardless of whether they work that number. This provision would tend to make the overtime pay requirements a greater disincentive, but at the same time, when overtime is unavoidable, this provision would be a disincentive to spread the overtime work around among the employees. The companies would want to concentrate the overtime work among a small number of the drivers. Consequently, it is not surprising that almost all of the agreements specify that overtime must be assigned or offered on the basis of seniority. However, overtime is voluntary for workers with a first claim on this work as long as there are enough junior workers available to perform the necessary work.

Owner-operators are covered in some of the agreements (not just the 6 mentioned above). In these cases, seniority rules and

eligibility for certain fringe benefits (most notably medical coverage and pensions) are specified. There are no overtime rules for owner-operators, nor is a standard workday or workweek defined. In a small number of other agreements (just under 15 percent), the ability of employers to use owner-operators is sharply restricted to emergency situations. The restrictions appear to be much tighter in the case of smaller companies.

The above findings on the standard work week, while similar to those noted in the Thorne Stevenson and Kellogg study, do point towards a greater prevalence for the payment of the overtime premium well before 60 hours per week. For example (Thorne Stevenson and Kellogg, 1983, p. 6):

> Typical overtime pay provisions for PCV truckers under collective agreements are time and one-half after 60 hours, after a certain daily or weekly mileage level, or after a combination of hours and mileage. Some, however, are paid under collective agreements providing for time and one-half after 40 hours.
>
> For private truckers, overtime rates are variable; sample data indicate time and one-half rates typically after a range from 8 hours a day/40 hours a week to after 45 hours a week.
>
> In local cartage, overtime is usually paid after 50 hours.

SAFETY

Deregulation of the trucking industry, together with the approval for the use of larger trucks on the public highway system in the U.S., have heightened interest in the safety issue and have lead to several proposals to strengthen the federal government's safety program and coordinate safety regulation and enforcement at all levels of government. There have even been recommendations for

reversing the trend toward deregulation of the industry. But Richard Henderson, the executive vice president of the Private Truck Council of America, has argued (U.S. Senate, 1985b, p.249):

> Deregulation of trucking does not necessarily mean that safety will be adversely affected. While some carriers may cut back on maintenance and operate longer hours in order to compete, the way to address the issue is to enhance enforcement of the existing safety regulations, not to restrict competition.

There are three major components to the U.S. government's efforts to tighten up the enforcement of its existing regulations governing the safety of operation and equipment of commercial motor vehicle operators. One of the activities involves random roadside inspections of vehicles and drivers. Another is the safety audit of records and equipment conducted at the motor carriers' offices and terminals. The third involves the Motor Carrier Safety Assistance Program enacted in 1982. The program provides federal money to assist states in placing more state inspectors on the road to check more drivers and vehicles for compliance with the federal and state safety rules. One of the key criteria a state must satisfy in order to qualify for the funding is to adopt and enforce the Federal Motor Carrier Safety Regulations or similar state rules that are compatible with the federal rules.

Nevertheless, despite these efforts, the debate over deregulation and safety continues, to a considerable extent because of the shortage of qualified federal and state inspectors to enforce the safety rules. This shortage has been exacerbated by the rapid increase in the number of trucking companies operating on the public highways. The argument is generally cast in the following manner. The increased competition resulting from the deregulation of entry into the trucking industry puts pressure on carriers to lower prices

and thus cut costs. This in turn leads to lower levels of expenditures on maintenance, and pressures on drivers to exceed the hours of service regulations in order to meet delivery schedules. Much of the debate hinges on causes of the 18 percent increase in 1984 in the number of truck accidents (as reported in the Bureau of Motor Carrier Safety statistics).

The Department of Transportation has monitored the accident statistics since the implementation of the Motor Carrier Act of 1980 and has found no statistical evidence linking the presence or absence of economic regulation with the safety performance of motor carrier operations (U.S. Senate, 1985a, p.43). Both the Private Carrier Conference of the American Trucking Associations (U.S. Senate, 1985b, p.201, 202) and the Private Truck Council of America (U.S. Senate, 1985c, p.58) have dismissed the 1984 statistics as a temporary blip in what is otherwise a trendless path for trucking accidents. Both groups noted that the number of accidents declined in both 1982 and 1983, and that with the exception of the 1984 numbers, truck accidents in the other years following deregulation in 1980 were below the number of accidents reported in 1979.

On the other side of the debate, The Teamsters Union has claimed that deregulation has lead to a deterioration in safety. Jackie Presser, the president of the union, has remarked (U.S. Senate, 1985a, p.287):

> With only 100 federal highway inspectors to monitor 5 million trucks, the real enforcement of highway safety has been the safety clauses agreed to between the union and organized carriers ... Since the loss of these unionized carriers, we have seen an indisputable downturn in safety. With the limited resources and manpower of federal agencies, all efforts are directed at the large established carriers that have historically maintained their safety fitness as a result of the National Master Freight Agreement(with the union). It is no wonder that to show any safety enforcement by the federal

> government, these agencies can only audit and monitor these carriers instead of chasing the fly-by-night, Mom and Pop carriers (which are causing the cutthroat competition which in turn jeopardizes the safety of all users of public roads).

While the evidence at the national level appears to be inconclusive, the evidence for California, which also deregulated intra-state trucking, appears to support the position that deregulation does lead to a deterioration in safety levels.[17] The debate will undoubtedly continue as more data become available. However, all participants in the debate agree that greater and stricter enforcement efforts are required.

MTC officials after reviewing the studies examining the effects of fatigue on drivers reached the following conclusions (Gough and Thomas, 1987, p.3):

> There is little doubt that fatigue adversely affects the efficiency of performance, albeit to varying degrees ... It is not clear from studies that a positive and consistent relationship can be established that a certain number ofhours leads to fatigue, which in turn results in accidents ... In short, it has not been established that the number of driving hours alone are related to the frequency or severity of truck accidents. In fact, a study by the U.S. Bureau of Motor Carrier Safety of 25,666 truck accidents, and 485 involving buses, found that the vast majority of drivers were in compliance with regulations governing the hours of service.

Yet despite the absence of conclusive evidence, MTC is committed to and involved in a national effort to develop a safety code for the trucking industry, one which will include regulations establishing maximum driving and on-duty hours. As the MTC officials pointed out (ibid, p.14), "we consider it a reasonable assumption that maximum driving and on duty rules will minimize the incidence of fatigue, thereby reducing accidents."

CONCLUSIONS AND RECOMMENDATIONS

Several questions have been raised about the current hours of work

and overtime rules in the ESA as they apply to the truck transportation sector and about possible revisions in these rules. Examples include ambiguities and inconsistencies in coverage of the rules, inequities in the overtime rules, the shortcomings of enforcement by complaint, and the excessive degree of proposed legislative changes which may affect this industry. One approach begin addressing these various problems is to treat the overtime rules separately from he hours of work rules. This seems to be a reasonable starting point, for the latter rules are concerned primarily with safety, and the former rules are concerned with worksharing and the protection of workers with weak bargaining powers. Yet, if one maintains the regulation that overtime work must be voluntarily accepted by employees, one can ask why there remains any need for hours of work regulations. Perhaps, the former rule does preclude the need for the latter one. However, there would still remain the difficulty that owner-operators might not be covered by any hours of work rules and therefore pose a possible safety problem, and some employees might be willing to make a trade-off in accepting longer hours for higher income even though the safety threat, especially to third parties, could possibly increase to socially inefficient levels. Consequently, I recommend the following:

1. The overtime rules should be treated separately from the hours of work rules.

MTC, in trying to formulate hours of work rules from the perspective of enhancing the safety record of the industry, has suggested three objectives for the regulations (Gough and Thomas, 1987, p.14, 15):

- the regulation must be uniform across Canada and applicable to all motor carriers and drivers, with rare exception;
- the regulation should be clear, simple and equitable with as few exemptions and exceptions as possible; and
- the regulation must be enforceable and enforced.

I fully concur with these views and so recommend:

2. The above three objectives should be implicit in any revisions to the current ESA regulations.

MTC has proposed the following hours of work and service rules:

- the rules would be applicable to all commercial motor vehicles with a registered gross weight of 4500 kgs. or more;
- the rules would not apply in severe emergency situations;
- the rules would not apply in severe emergency situations;
- a maximum of10 hours of driving in any work shift;
- a maximum of 15 hours of duty in any work shift;
- a maximum of 60 hours on duty in 7 consecutive days or 70 hours in 8 consecutive days;
- two additional driving hours for adverse driving or weather conditions, only if under normal circumstances the trip could have been made in 10 hours;
- no extended hours permits; and
- on-highway enforcement and audits at company place of business.

If a National Safety Code is produced, MTC will most likely incorporate the rules in a new piece of legislation. thus, to avoid the prospect of conflict between the ESA rules and those of the National Code and dual regulation within the province (one must keep in mind that the exemption from the U.S. Fair Labor Standards Act for

the trucking industry was predicated on avoiding dual regulation of the industry), the Task Force has two options. One is to alter the hours of work rules in the ESA to mirror those in the National Safety Code. The other is to exempt those segments of the trucking industry which would be covered in the National Code.

3. The segments of the trucking industry covered by a National Safety Code should be exempted entirely from the hours of work rules in the ESA.

4. The Ministry of Labour should work in conjunction with MTC in formulating an appropriate set of regulations, including enforcement mechanisms.

In developing any rules, one must keep in mind that a minimum set of standards provides enough slack so that the need for exemptions are kept to a minimum as well. On the other hand, more stringent rules lead to a great demand for exemptions and create incentives for non-compliance. Therefore, I recommend the following rules as a starting point for discussions between the Ministry of Labour and MTC.

5. Maximum hours of driving -- 12 hours per day; maximum hours on duty -- 15 per day; maximum of 70 hours per 7 consecutive days. Maximums not applicable in adverse weather conditions or emergencies.

Consideration should be given to the granting of permits for exemptions to these rules but only at the discretion of the director of the provincial agency responsible for the hours of work rules for the trucking industry, and for short periods of time. There should not be any automatic renewal provision in the granting of such permits.

These proposals should be slack enough to take into account the

special problems inherent in driving the longer distances in northern Ontario. Furthermore, by establishing a fixed set of standards for all motor vehicle operators, and on-highway inspections, it may be possible to cover owner-operators in the legislation.

Turning to the overtime rules, the option of adopting a uniform set of regulations to cover most segments of the trucking industry (preferably those covered by the National Safety Code) presents more difficulties. However, the greater the number of rules and more importantly, the greater the differences in the regulations among segments of the industry, the greater the incentives for circumventing or disregarding the legislation. The experience with the PCV Act provides testimony to this argument; namely, the proliferation of a large number of driver services not covered by the Act, but yet able to provide services competitive with carries licensed under the Act. Moreover, different rules become less tenable in a deregulated environment. As suggested in section III above, in a deregulated environment private carriers may disappear. Maintaining separate and more stringent overtime rules for private carriers may accelerate this trend in Canada in a deregulated environment as private carriers resort to substituting owner-operators or converting their trucking operations into for-hire subsidiaries subject to the slacker rules.

Similarly, if the Task Force adopts the current rules for private carrier segment as the basis for a single set of rules for the entire industry, the for-hire carriers could attempt to restructure their operations in order to avoid the tighter rules. The large for-hire carriers could set up owner-operator divisions and convert employees into owner-operators who in turn would not be

covered by the ESA. Or for-hire carriers could relocate some of their operations (offices, terminals) or apply for route authorities in other provinces or in the U.S. in order to become interprovincial or U.S.-based carriers and thus exempt from the ESA. While the unionized sector might be able to protect workers from any adverse consequences of any possible restructuring by the companies, the non-union sector might be adversely affected. Hence, the labour law which attempts to protect and assist this sector in particular, might end up hurting these workers most.

Although a single solution to the various problems stemming from the current inequities in the overtime rules in the ESA is not obvious, the following recommendations are put forth recognizing that they cannot please everyone and they may benefit some and penalize others. Changes are required in anticipation of the deregulation of the trucking industry, and the changes should be based on the objectives described above by MTC.

6. There should be a single overtime rule for everyone defined as a motor vehicle operator. The definition in the Canada Motor Vehicle Operators Hours of Service Regulations could be adopted.

7. Hours worked in excess of 50 but less than 60 per week should be compensated at a rate of one-and-one-half times the regular rate of pay. Hours worked in excess of 60 per week should be compensated at the rate of two times the regular rate of pay.

8. The director should have the right to grant exemptions on an annual basis to companies where both the employer and employees agree

to waiving the overtime premium or where the company can demonstrate that the compensation scheme builds in a premium rate for hour in excess of 50 per week.

While these recommendations appear to be tightening up the overtime rules for some segments of the industry, notably the for-hire segments, and easing them for others (e.g. private carriers), the basic wage rates in the various segments should adjust to offset the changes in the overtime rules and so restore equilibrium in the labour market for truck drivers and other related workers. For example, we would expect the basic wage rate to increase for employees hired by private carriers, and to decrease for drivers working for for-hire carriers. A more important consideration in pursuing these recommendations is that for these changes to be viable, Ontario will have to convince the federal government to change the overtime rules of the Canada Labour Code for motor vehicle operators. Unless the federal and provincial rules are comparable, incentives remain for trucking companies to alter their operations in order to switch from provincial to federal jurisdiction or vice versa.

Finally, I recommend the following as a means for further reducing the options available to circumventing the overtime rules in a deregulated environment.

9. The Ministry of Labour should explore the possibility of defining owner-operators, on long-term contracts or leases with a trucking company or shipper, as employees for the purpose of the application of the ESA, or at least the overtime provisions in the ESA.

NOTES:

1. The regulation of interprovincial and intraprovincial trucking was ceded by the federal government to the provincial governments in 1954. However, the federal government is trying to regain dominance in the regulation of the truck transport industry.

2. In section 1 of the PCV Act, a commercial cartage zone is defined as "an area designated as a commercial cartage zone by the regulations". An urban zone is defined as "an area consisting of one urban municipality and lands adjacent thereto and within a distance of five kilometres therefrom, but does not include any part of any other urban municipality".

3. According to section 4a(4) in the PCV Act, the holder "of a certificate of intercorporate exemption and all affiliated corporations named in the certificate may operate commercial vehicles on highways for the transportation for compensation of goods owned by any of them."

4. See section 4(2) in the PCV Act for descriptions of valid leases.

5. A Class R license authorizes "the licensee to conduct a commercial vehicle service exclusively for the transportation, other than by a tank truck or tank trailer, of, i. sand, gravel, earth, crushed or uncut rock and stone, asphalt mixes, slag and rubble, and

ii. salt, calcium, chloride, and asphalt mixes directly to highway construction or maintenance sites or to stockpiles for further use on highway construction or maintenance sites."

6. The private carriers included in the survey were operators with fleets of 15 or more vehicles (trucks, road tractors and trailers) who carried their own commodities using dedicated drivers on company payrolls leased drivers or broker operators. Excluded were operators who used leased vehicles exclusively.

7. These summaries were generously provided by the Ministry of Treasury and Economics.

8. These companies are not required to have PCV licenses.

9. Section 16(2) in the ESA allows for averaging, over two consecutive weeks, with limits ranging between 33 and 77 hours before an overtime premium has to be paid.

10. Section 16(2) in the ESA allows for averaging over two consecutive weeks with limits ranging between 28 and 72 hours before an overtime premium has to be paid.

11. Such as the method of payment in the industry in which many highway drivers are paid a combination hourly and mileage rate based on a standard workweek of 60 hours.

12. According to Thorne Stevenson and Kellogg (1983, p.33):

> ... it appears that driver-leasing firms operate on a 60 hour work week for drivers ... Payment of overtime, as provided under the ESA regulations after 44 hours, is often not paid as such. Instead, some driver-leasing operators indicate that wages payable to their drivers either on an hourly or mileage basis include a 'factor' that 'recognizes' a 60 hour work week.

13. See U.S. Department of Labor, Regulations, Part 782: Exemption from Maximum Hours Provisions for Certain Employees of Motor Carriers Under the Fair Labor Standards Act, Wages and Hours Division Publication 1044 (August, 1978).

14. The OTA, in its submission to the Task Force, cited the following factors for warranting special attention to the trucking industry, and the maintenance of flexible rules: fluctuations in business activity, seasonal fluctuations, shortage of qualified employees, and the service characteristics of the industry.

15. Since both private carriers and for-hire carriers compete in the same labour market for drivers (the jobs essentially entail similar working conditions and require comparable skills), workers preferring shorter hours and lower straight-time wage rates would be attracted to private carriers, while those preferring longer hours and higher wages would be attracted to for-hire carriers. Consequently, the straight-time wage rate should be approximately 5 to 6 percent higher, ceteris paribus, in the for-hire segment than in the private carrier segment. (This differential is derived from the assumption that at the margin, a truck-driver would be indifferent between working 60 hours per week at the basic wage in the for-hire segment and working 60 hours per week at the basic wage for 44 hours and 1.5 times the basic wage for the other 16 hours in the private carrier segment.) The different overtime rules may have produced compensating wage differentials so that neither employees nor employers are at a disadvantage under the present rules.

16. In light of the discussion above, this observation may not be correct.

17. See California Public Utilities Commission, Docket

Nos. 01184-05-048 et al., "Investigation on the Commission's Own Motion into the Present System of Transportation Regulation".

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